THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 8436 of 2004

O r d e r:

Assailing the award dated 18.07.2002, passed by the Labour Court, Hyderabad, dismissing the I.D. in I.D. No. 25 of 1998, raised by the petitioner assailing the proceedings dated 14.11.1997 issued by the respondent as illegal and arbitrary, and consequently to set aside the same, and direct the respondent to continue the petitioner in service till he attains superannuation on the basis of his date of birth as 03.05.1951.

The learned counsel for the petitioner submitted that the petitioner's date of birth is 03.05.1951, as certified by the Mandal Revenue Officer, Medak District, vide certificate dated 13.08.1988. He submitted that the fact that the petitioner was aged 35 years as on 24.02.1989, is evident from the fact that the respondents accepting the certificate issued by the Civil Surgeon, Sangareddy General Hospital, Medak, entered his age in the service records as 35 years, which is also reflected in duty badge. He submitted that the respondents having entered his date of birth in the service records as 03.05.1951, were not justified in retiring him prematurely by issuing proceedings dated 14.11.1997, which is illegal and arbitrary, and the Labour Court has also committed an error in confirming the same, and more so when the issue of determination of age of the petitioner in pursuance of the interim order of the Labour Court, was pending before the Medical Board of Osmania General Hospital. He, thus prayed that the impugned award of the Labour Court be set aside and respondent No.2 be directed to reinstate the petitioner into service with all

consequential benefits.

On the other hand, the learned Standing Counsel for the respondents contended that the claim of the petitioner that his date of birth is 03.05.1951, is not supported by any authenticated proof, and in the absence of authenticated proof, no exception can be taken to the award of the Labour Court, upholding the order passed by the 2nd respondent retiring the petitioner from service. He thus prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for respondent No.2-BHEL Labour Contract Co-operative Society Limited.

Though the petitioner contends that his date of birth is 03.05.1951, the fact remains, the same is not supported by any authenticated evidence, such as school record, and though the petitioner to prove that his date of birth is 03.05.1951, has produced certificate dated 13.11.1988, issued by the Mandal Revenue Officer, Shankarampet, the fact remains, the Labour Court observed that the date of birth on the certificate was altered as if to appear that it is 03.05.1951. This apart, the certificate, issued by the Mandal Revenue Officer, did not state based on what record, the date of birth of the petitioner, came to be certified as 03.05.1951. Further, though the petitioner contends that the ESI card issued to him shows that his age of 37 years, the fact remains, the same neither contains the date of birth nor reflects the date on which it was issued nor it contains the seal of the 2nd respondent. Further more, it appears from the award that the petitioner filed an application in I.A. No. 22 of 2002 for sending him to medical examination, and though an order dated 28.02.2002 was passed in his favour, the petitioner did not submit himself to medical tests for determining his age, despite several opportunities. In

such circumstances, no exception can be taken to the award passed by the Labour Court, upholding the order of retirement of the petitioner from service, and more so when the petitioner failed to prove that his date of birth was 03.05.1951 beyond doubt.

For the fore going reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

_____

N.V. RAMANA, J.

Dated: 14th November, 2006.
KSR